



**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION**

**OPERATIONAL MEMORANDUM
NO. 2**

**SUBJECT: CHANGES AT A STATIONARY SOURCE AFTER RENEWABLE
OPERATING (RO) PERMIT ISSUANCE**

EFFECTIVE DATE: December 21, 1994

REVISED DATES: January 31, 1996; February 14, 1997; November 26, 2001

PREAMBLE

The Air Quality Division (AQD) has developed a Renewable Operating (RO) Permit program as mandated by the 1990 amendments to the federal Clean Air Act (CAA). The primary purpose of this permit program is to consolidate and clarify the air pollution control requirements that apply to a stationary source, herein after "source," and to establish adequate monitoring, recordkeeping, and reporting to ensure compliance with those requirements. In 1994, Operational Memorandum No. 2 was created to address how New Source Review (NSR) permits may be incorporated into RO Permits. However, it has been revised to clarify how any change at a source after RO Permit issuance, not just amendments or modifications for NSR permits, may be addressed. Rule 215, promulgated pursuant to Part 55, Air Quality Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451) describes procedures for changes at a source that are not required to be incorporated into an RO Permit until renewal. (Note: All rules cited in this Op Memo refer to rules promulgated pursuant to Act 451.) Rule 216 describes procedures for revising an RO Permit, including administrative amendments, minor modifications, and significant modifications.

The following describes each of the Rule 215 and Rule 216 procedures and defines the circumstances that would result in a notification of change, an administrative amendment, a minor modification, or a significant modification to an RO Permit. Nothing in Rule 215 or Rule 216 is meant to imply any limit on the inherent flexibility sources have under their RO Permits [FR 32267, Vol. 57, No. 140, July 21, 1992]. Attachments A and B provide supporting guidance on these rules.

POLICY

NOTIFICATION OF CHANGE

Some changes are not required to be incorporated into the RO Permit until the time of permit renewal. These are changes allowed under Rule 215. Instead of incorporation into the RO Permit at the time of the change, sources are required to provide a detailed notification to the AQD documenting the change.

Operational Flexibility

Under Rule 215(1)(a), changes, at a stationary source with an RO Permit, that would “contravene” a specific RO permit condition can be made provided that all of the following are met:

- The change is not a modification under Title I of the CAA (i.e., a change that would trigger Prevention of Significant Deterioration (PSD), Rule 220, New Source Performance Standards (NSPS), or Maximum Achievable Control Technology (MACT)).
- Actual emissions do not exceed a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, standard or condition (including a work practice standard) or federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.
- The change does not violate any applicable requirement including monitoring, recordkeeping, reporting, or compliance certification.

This category can be used for changes in materials, where the materials are specified as a permit condition, and for pollution prevention that reduces emissions and triggers no new applicable requirements. In addition, emission units could be removed from a stationary source where all associated applicable requirements in the RO permit become obsolete as a result. Changing brands of coatings or switching paint colors that are specified in an RO Permit is another change that can be made under Rule 215(1)(a) provided all emissions limits are met.

The procedures for Rule 215(1)(a) require sources to submit written notification to the AQD and the U.S. Environmental Protection Agency (EPA) at least 7 days prior to the change. The notification must include a description of the change, the date it will occur, and describe any change in emissions and any requirements that will no longer apply.

Under Rule 215(1)(b), emissions trading actions within a single stationary source may be allowed without revision to the RO Permit provided the Michigan Department of Environmental Quality (MDEQ) has an approved emissions trading program that authorizes such a change. Additional guidance will be developed upon approval of the emissions trading program.

The procedures for intra-facility emissions trading require sources to submit written notification to the AQD and the EPA at least 7 days prior to the change. The notification must include all information required by the approved emissions trading program, including, at a minimum: a description and date of the change, plus any change in emissions that will result; pollutants subject to the emissions trade; requirements which will be met through emissions trading; and the requirements of the trading program for which the source will comply and which allow the trade.

Inter-facility Emissions Trading

Under Rule 215(2), emissions trading actions between two or more stationary sources may be allowed without revision to the RO Permit where allowed by an approved emissions trading program and the change does not affect an emission limit or other applicable requirement within the RO Permit. For such emissions trading actions, the source must notify the AQD and the EPA consistent with an approved emissions trading program. Additional guidance will be developed upon approval of the trading program.

Off-Permit Changes

Rule 215(3) allows certain changes to remain "off-permit" until the RO Permit is renewed, provided the changes do not create a conflict with any existing RO Permit conditions (i.e., are not specifically addressed in the RO permit) and they are not forbidden by the RO Permit. In effect, the change must not be in conflict with current applicable requirements or applicable requirements that may arise after the RO Permit is issued. Note that Rule 215(3) identifies categories of changes, such as NSR permits issued under PSD or Rule 220, which are of sufficient importance that they may not remain off-permit. Off-permit means changes can be made to an emission unit or units covered by an existing RO Permit without revision to that permit until renewal of the permit.

Changes are allowed under Rule 215(3) provided:

- The change complies with all applicable requirements.
- The change is not a modification under Title I of the CAA (i.e., a change that would trigger PSD, Rule 220, NSPS, or MACT).
- The change is not contrary to any applicable requirements of Title IV, if the source is an affected source under the Title IV acid rain provisions.

An example of a change under Rule 215(3) is the installation of a new emission unit with an NSR permit, not issued under PSD, which does not conflict with or is not prohibited by any requirement in the original RO permit. Another Rule 215(3) change would be the installation of a new emission unit subject to an NSPS, MACT, or other standard where an NSR permit was not required, and the equipment is not specifically addressed in the original RO permit, provided the above criteria are met.

The procedure for off-permit changes requires sources to submit a contemporaneous written notification to the AQD and the EPA regarding the change that includes a description of the change, any new applicable requirements, and a statement that the notification is provided pursuant to Rule 215(3). The source is also required to maintain records that describe the changes made off-permit.

All notifications of change are to be submitted using forms developed by the AQD. See Attachments B.1 and B.2 for notification time frames.

INSIGNIFICANT CHANGES

In general, Rule 215(4) provides that changes as identified in Rule 212 can be made without revision to the RO Permit. Rule 215(4) has the same basic qualifiers as the provisions of Rule 215(3), except that these changes can be made without formal notification to the AQD. Instead, records pertaining to the change must be kept by the source.

Rule 215(4) allows for off-permit changes at a stationary source provided:

- The change does not result in a violation of any applicable requirement.
- The change would not require or modify any case-by-case determination of an existing emission limitation or standard (i.e., synthetic minor limit, Best Available Control Technology, etc.), source-specific ambient air impacts, or visibility/increment analyses.

- The change would not establish or modify an emission limit, standard, or other condition of an RO permit that the source has assumed in order to avoid another applicable requirement to which the source would otherwise be subject.
- The change is not a modification under Title I of the CAA (i.e., a change that would trigger PSD, Rule 220, NSPS, or MACT).

Examples for this category includes changes to or the installation of any emission unit that is exempt from Rule 201 pursuant to Rules 279 through 290, provided the above criteria are met. This also includes physically moving equipment within the stationary source provided the move does not change or affect applicable requirements.

Rule 215(4) does not require any submittal or notification procedures.

ADMINISTRATIVE AMENDMENTS

Simple Administrative Amendments

Rule 216(1)(a)(i)-(iv) applies to simple or trivial changes to an issued RO Permit as described below.

Correction of Typographical Errors - Rule 216(1)(a)(i) allows typographical errors to be corrected administratively.

Changes in Responsible Official - Rule 216(1)(a)(ii) allows changes in the name, address, or phone number of the responsible official or contact person of the stationary source to be made administratively if they are specifically identified in the RO Permit. Generally, most RO Permits will not specifically identify the responsible official or contact person. Therefore, an administrative amendment will typically not be required for changes in responsible official or contact person. However, if a responsible official or a contact person were specifically identified in the RO Permit, an application for an administrative amendment would be required if there was a change in the responsible official or contact person information.

Increased Frequency of Monitoring, Recordkeeping and Reporting - Rule 216(1)(a)(iii) allows a company to increase the frequency of their monitoring, recordkeeping and reporting activities administratively. A source may voluntarily choose to increase the frequency of their monitoring, recordkeeping and reporting activities to ensure that they are meeting the minimum requirements that are specified in the RO Permit. Increases in monitoring or recordkeeping can be handled through a simple administrative amendment.

Changes in Ownership or Operational Control - Rule 216(1)(a)(iv) allows for a change in the ownership or operational control of a source where the AQD determines that no other change in the permit is necessary and a written agreement between the parties has been submitted to the AQD. If there is a change in ownership or operational control at a stationary source, an application for an administrative amendment must be submitted because the owner or operator is specifically identified in the RO Permit.

The procedure for a simple administrative amendment requires the submittal of an application that includes a description of the change.

Administrative Amendments Involving NSR

Rule 216(1)(a)(v) allows for changes approved in an NSR permit to be incorporated into an RO Permit as an administrative amendment provided:

- The NSR permit includes sufficient permit conditions to satisfy the permit content requirements of Rule 213, including the monitoring, recordkeeping, and reporting requirements.
- The NSR permit is reviewed by the public and affected states as specified in Rule 214.
- The source is in compliance with the conditions of the NSR permit at the time the amendment to the RO Permit is sought.
- No changes need to be made to the conditions of the NSR permit.

In effect, changes that would otherwise have required a significant modification can be more simply incorporated into the RO Permit as an administrative amendment if the monitoring, recordkeeping, and reporting requirements are adequate and if the NSR process included a public comment period. Amendments under Rule 216(1)(a)(v) include NSR permits issued for modifications under Title I of the CAA, including MACT determinations made under Section 112(g) that meet specified criteria.

The use of this procedure will most commonly be used when the NSR permit requires a public comment period prior to issuance. Examples of such permits include major offset modifications under Rule 220, major modifications under the federal PSD regulations, or permits that restrict a source's potential to emit under Rule 205. A "controversial" NSR permit is required by Section 5511 of Act 451 to complete public participation prior to issuance and could, as a result, also be incorporated as an administrative permit amendment. A permit applicant could also choose to have an NSR permit undergo public participation to qualify for incorporation into the RO Permit under administrative amendments that involve NSR.

Under Rule 216(1)(c)(iii), a source can make a change covered by an NSR permit as soon as the permit is issued. After the change has been made and until the administrative amendment is approved, the source shall comply with the applicable requirements and conditions in the NSR permit that cover the change. In other words, when a condition of the NSR permit contradicts a condition of the RO Permit, the source need only comply with the conditions of the NSR permit. If the source fails to comply with the NSR permit before the administrative amendment to the RO Permit is approved, then the conditions of the RO Permit are still enforceable.

The procedure for an administrative amendment involving NSR calls for the source to submit two reports to the AQD under Rule 216(1)(a)(v). The first is written notification that the equipment has been installed, which is required within 30 days after the date of completing the installation. The second is an application requesting an administrative amendment, which is required within 12 months after the date of completing the installation. The application for the administrative amendment must include basic RO Permit application information such as a description of the change; results of testing, monitoring, and recordkeeping; a schedule of compliance; and a certification by the responsible official that states the information in the application for the administrative permit amendment is true, accurate, and complete.

The AQD has 60 days to review the information in the administrative amendment application to determine whether a sufficient compliance demonstration is provided. If the source is in compliance with the proposed change, the AQD forwards a copy of the administrative amendment application and a proposed amended RO Permit to the EPA for the agency's 45-day review period. If the Administrator of the EPA objects in writing to the administrative amendment before the end of the 45-day review period, then the RO Permit cannot be amended until the objection is resolved.

Both types of administrative amendments are to be submitted using forms developed by the AQD. See Attachments B.3 and B.4 for administrative amendment time frames.

MINOR MODIFICATIONS

Under Rule 216(2), changes that do not qualify under operational flexibility, off-permit, or as administrative amendments, and are not required to be significant modifications, may be incorporated into an RO permit as minor modifications provided:

- The changes would not result in a violation of any applicable requirement.
- The changes would not significantly affect any existing monitoring, recordkeeping, or reporting requirements contained in an existing RO Permit.
- The changes would not require or modify a case-by-case determination.
- The changes would not establish or affect a federally enforceable term or condition in the RO Permit for which there is no corresponding underlying applicable requirement and that the stationary source has assumed to avoid an applicable requirement, specifically PSD, Rule 220, MACT, or other standard, to which the stationary source would otherwise be subject.

For example, changes to an existing emission unit(s) covered by an NSR permit but that contains all necessary monitoring recordkeeping and reporting, may qualify for the minor modification process provided the criteria in Rule 216(2) is not triggered.

Rule 216(2)(a)(v) describes types of changes that cannot be incorporated as a minor permit modification. These changes include modifications that would trigger any applicable requirement of Section 111 (NSPS), Section 112 (MACT), or Part C (PSD) of Title I of the federal CAA.

Rule 216(2)(d) provides that a source can make a change covered by a minor NSR permit as soon as the AQD has received a minor modification application which is required to contain reasonable responses to all information on the application form. The source can construct the emission unit consistent with an NSR permit, but cannot operate the emission unit until a complete minor modification application has been received by AQD. If a condition included in the application for a minor permit modification contradicts a requirement of the RO Permit, the source need only comply with the changes proposed in the modification application. If the source fails to comply with the conditions proposed in the application, the conditions of the RO Permit are still enforceable and the application may be denied.

The procedure for a minor modification requires that the AQD notify the EPA and any affected states within 5 working days of receipt of a complete application. The AQD has up to 30 days to provide the EPA with a proposed permit. The EPA's required 45-day review period begins once they receive the proposed permit. An action to approve, revise, or deny the minor permit modification must be taken within 15 days after the end

of the EPA's 45-day review period, but shall not exceed 90 days of receipt of the complete application.

Minor modification requests are to be submitted using forms developed by the AQD. See Attachment B.5 for minor modification time frames.

SIGNIFICANT MODIFICATIONS

Rule 216(3)(a) describes the types of changes that would require a significant RO Permit modification. These are changes that do not qualify for any of the previous categories and that involve any of the following (unless part of a NSR permit meeting Rule 216(1)(a)(v) criteria):

- Modifications under Title I of the CAA (i.e. changes that would trigger PSD, Rule 220, NSPS, or MACT).
- Changes that would result in emissions that exceed the emissions allowed under an RO Permit.
- Changes that would significantly affect an existing monitoring, recordkeeping, or reporting requirement in an RO Permit. For example, changing a continuous emissions monitor to a periodic emissions monitor or changing monitoring or recordkeeping frequency from daily to monthly.
- Changes that would require or modify a case-by-case determination of an emission limitation or other standard, a source-specific determination of ambient air impacts for temporary sources, or a visibility or increment analysis.
- Changes that would establish or modify an emission limitation, standard, or other condition of the RO Permit that the stationary source has assumed in order to avoid an applicable requirement, specifically PSD, Rule 220, MACT, or other standard, to which the stationary source would otherwise be subject.

Examples of changes that fall under Rule 216(3) include the installation of new equipment or the modification of existing equipment contained under either a minor NSR permit or a NSR permit issued pursuant to PSD, Rule 220, or Section 112(g), which did not contain all the necessary monitoring, recordkeeping, and reporting requirements.

The procedures for a significant modification are equivalent to those for initial RO Permit issuance, except that the significant modification application addresses only the emission units affected by the change. In addition, the applicant is required to submit RO permit application forms as part of a significant modification application. If there is non-compliance with the terms and conditions of the NSR permit, which governs the change, then a schedule of compliance needs to be incorporated into the RO Permit as a significant permit modification, in addition to the terms and conditions of the NSR permit.

The AQD must take final action on a significant modification in accordance with the requirements of Rule 214. However, this final action must be taken within 9 months of receipt by the AQD of an administratively complete application for the significant modification.

Significant modification requests are to be submitted using forms developed by the AQD. See Attachment B.6 for significant modification time frames.

STATE-ONLY MODIFICATIONS

Rule 216(4) provides that any modification that involves changes to terms and conditions of an RO Permit that are designated as not enforceable under the federal CAA is a state-only modification. If the change results in a new applicable requirement that must be enforceable under the federal CAA, then the change cannot be a state-only modification.

Rule 216(4)(d) provides that a source can make a change covered by a state-only modification as soon as the AQD has received a state-only modification application which contains reasonable responses to all information requested on the application form. If a condition included in the application for a state-only permit modification contradicts a requirement of the RO permit, the source need only comply with the changes proposed in the modification application. If the source fails to comply with the conditions proposed in the application, the conditions of the RO permit are still enforceable and the application may be denied.

The procedure for a state-only modification requires the AQD to review and to take a final action to approve, revise, or deny the state-only permit modification within 90 days of receipt of the complete application.

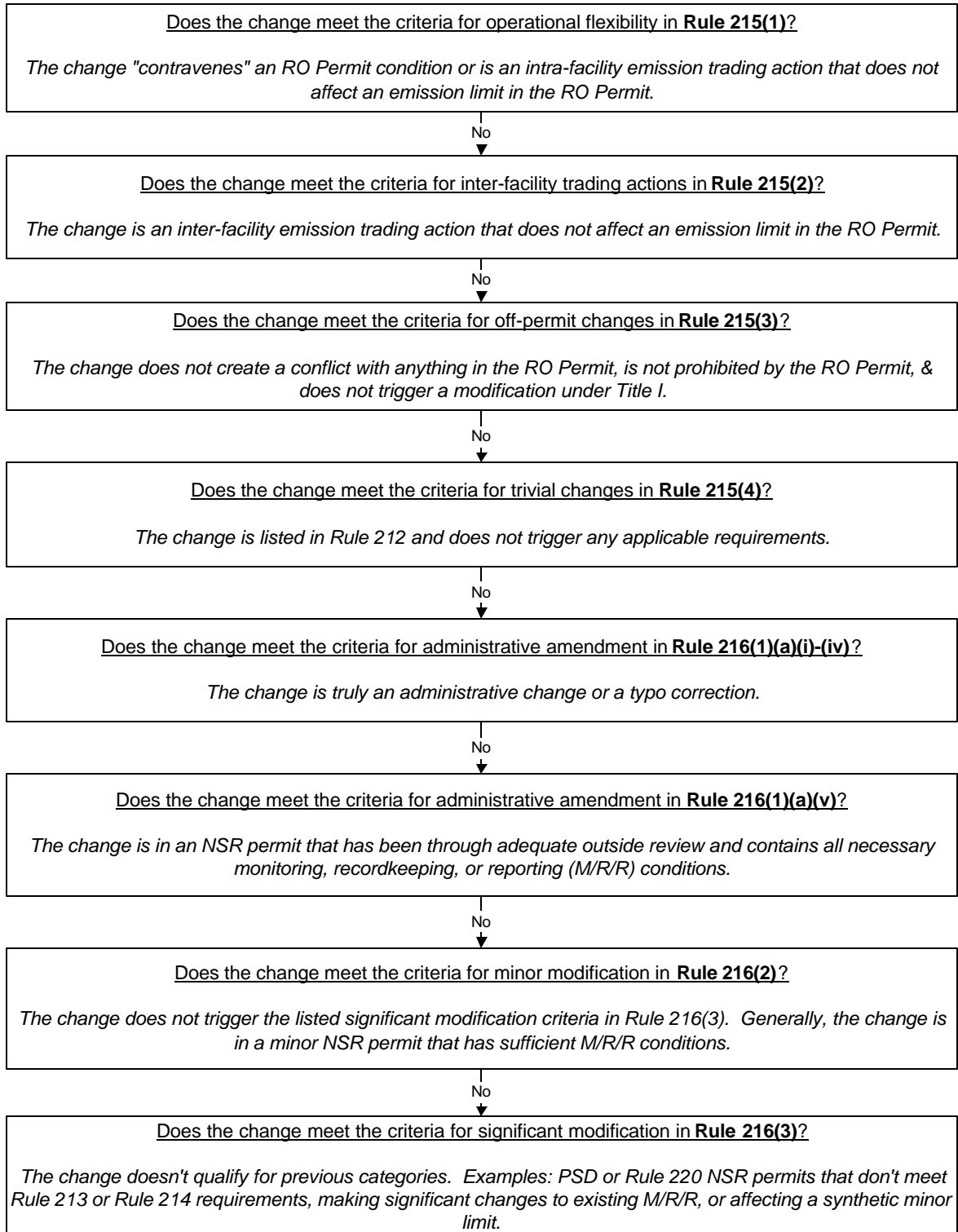
State-only modification requests are to be submitted using forms developed by the AQD.

This memorandum is intended to provide guidance to the AQD staff to foster consistent application of Part 55 of Act 451 and the administrative rules promulgated thereunder. This document is not intended to convey any rights to any parties or create any duties or responsibilities under law. This document and matters addressed herein are subject to revision.

Questions regarding this memorandum should be directed to the appropriate district office.

ATTACHMENT A.1

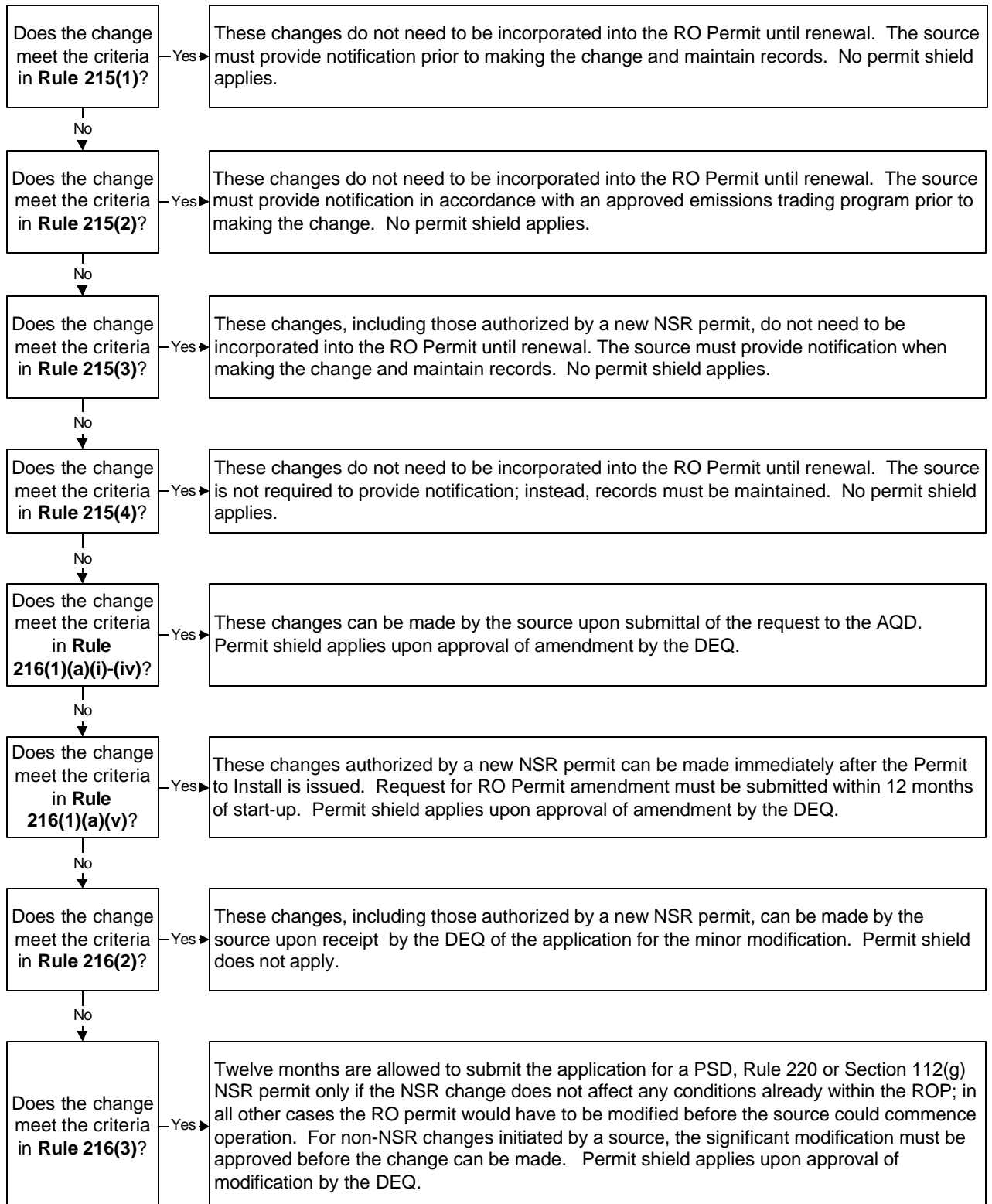
**A change is going to be made at a source with an issued Renewable Operating Permit -
What needs to be done and when? Part 1**



NOTE: Overview for Rule 216(4) changes are found on page 7 of this document.

ATTACHMENT A.2

**A change is going to be made at a source with an issued Renewable Operating Permit -
What needs to be done and when? Overview, Part 2**



NOTE: Overview for Rule 216(4) changes are found on page 7 of this document.

Renewable Operating (RO) Permit Program Timelines for Rule 215(1)(a) and (1)(b) Changes

Rule 215(1)(a) Operational Flexibility to Contravene Conditions

A change that will contravene a specific permit condition is identified
(per federal Clean Air Act Section 502(b)(10))

Source sends written
notification, received by the AQD
7 days in advance of change
{Rule 215(1)}

Rule 215(1)(b) Operational Flexibility for Intra-facility Emissions Trading

A change involving an intra-facility emissions trading action is identified.

Source sends written
notification, received by the AC
7 days in advance of change
{Rule 215(1)}

Renewable Operating (RO) Permit Program Timeline for Rule 215(2) Changes

Rule 215(2) Inter-facility Emissions Trading Activities

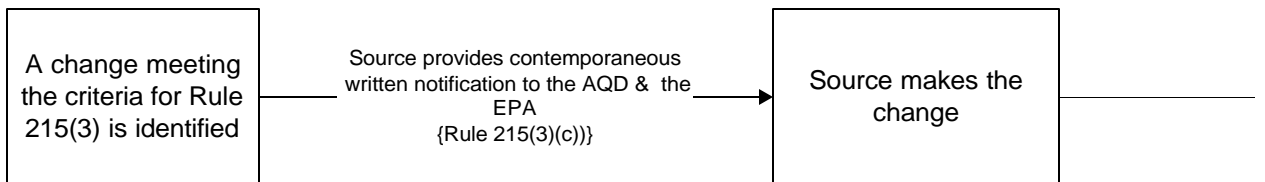
A change associated with an inter-facility emissions trade is identified.

Source sends written
notification, received by the
7 days in advance of cha

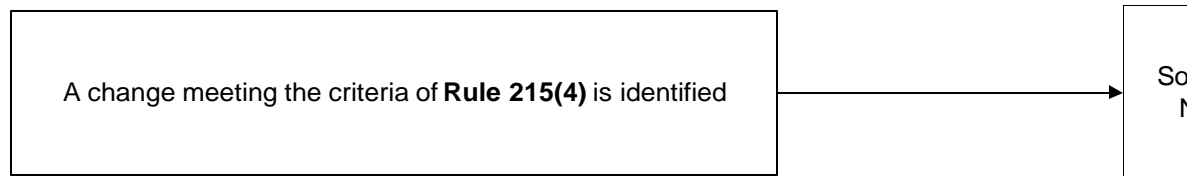
- Rule 215(2) provides for emissions trading actions between two or more sources. Discussions are still underway with the EPA as to what can be allowed under this provision and what rule clarifications are necessary for federal approval. In the interim, instances where a source participates in emissions trading or averaging between sources will be handled on a case-by-case basis. See also Rule 216(2).

**Renewable Operating (RO) Permit Program
Timelines for Rule 215(3) & Rule 215(4) Changes**

Rule 215(3) Off-Permit Changes

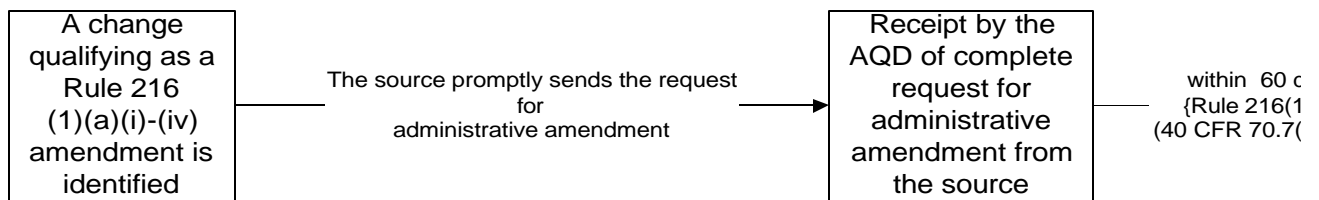


Rule 215(4) Insignificant Changes

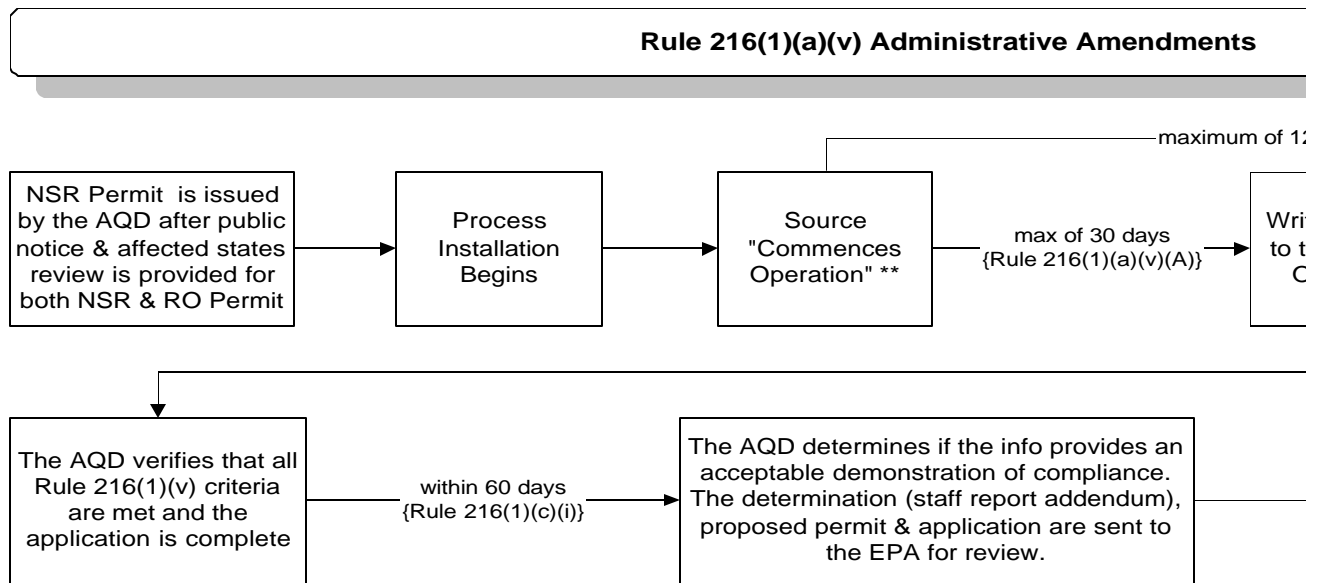


Renewable Operating (RO) Permit Program Timeline for Rule 216(1)(a)(i)-(iv) Changes

Rule 216(1)(a)(i)-(iv) Administrative Amendments

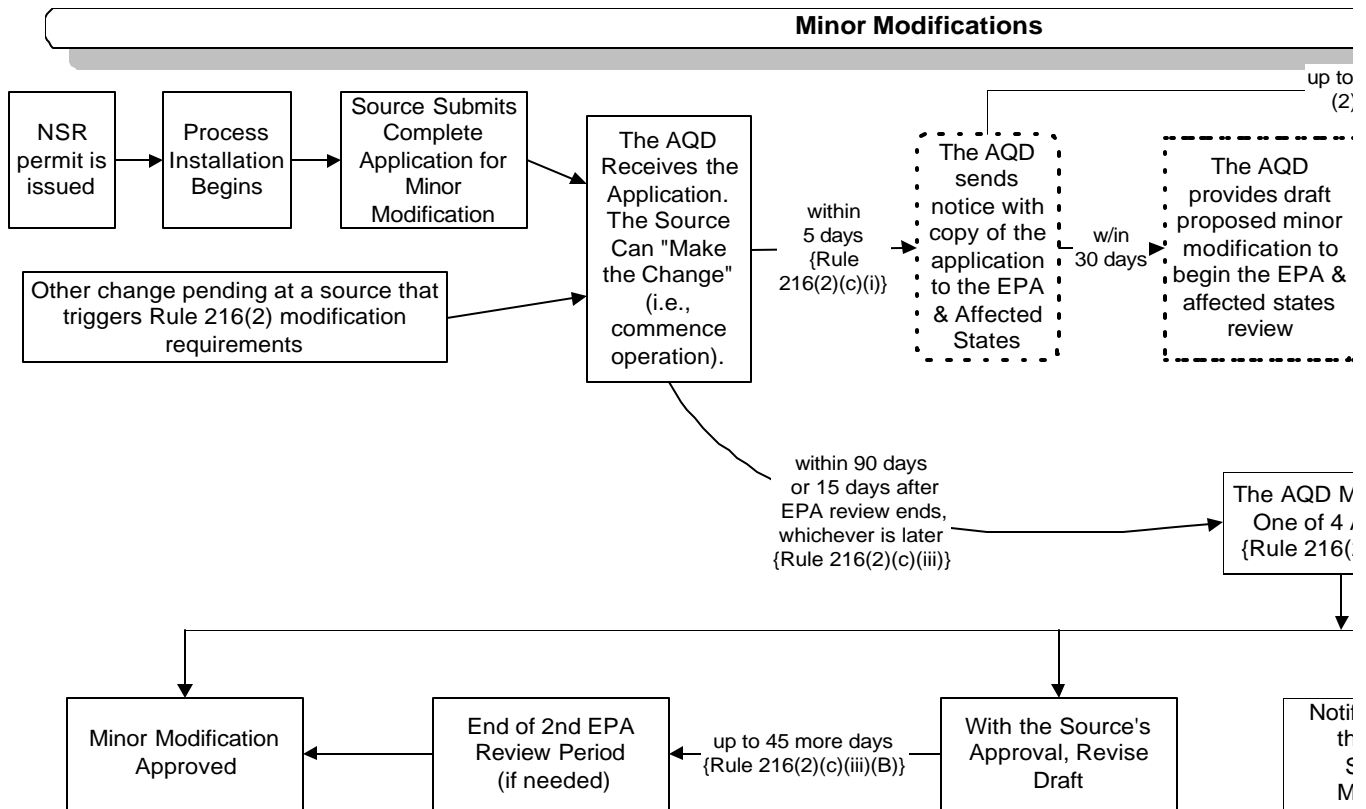


Renewable Operating (RO) Permit Program Timeline for Rule 216(1)(a)(v) Changes

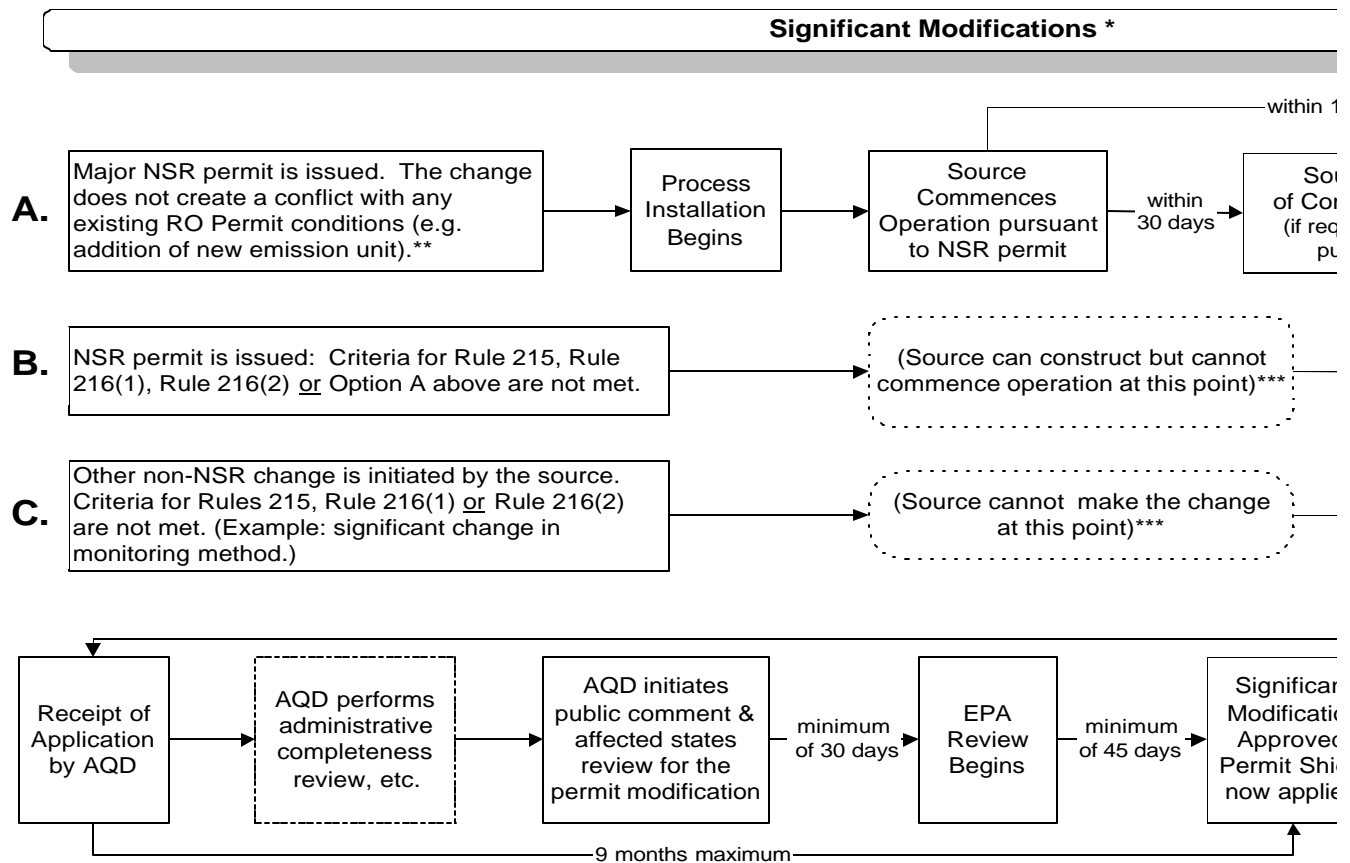


** Rule 216(1)(a)(v)(A) specifies that the written notice must be within 30 days after "completion of the installation, construction, reconstruction, relocation, alteration, or modification of the process or process equipment...". Rule 201(7) specifies that this is "considered to occur not later than commencement of trial operation of the process or process equipment." This is summarized as "Source commences operation."

Renewable Operating (RO) Permit Program Timeline for Rule 216(2) Changes



Renewable Operating Permit (ROP) Program Timeline for Rule 216(3) Changes



* A significant modification is one which is not an administrative amendment or a minor modification, and which involves any of the following (unless part of an NSR permit meeting Rule 216(1)(a)(v)): (i) a modification under Title I; (ii) a change that would result in emissions that exceed the emissions allowed under the ROP; (iii) the change would significantly affect an existing monitoring, recordkeeping or reporting requirement in the ROP; (iv) the change would require or modify a case-by-case determination; (v) the change would establish or modify a synthetic minor limit. The process for handling an application for a significant modification to an ROP is equivalent to that for initial issuance of the ROP, except that Rule 216(3)(d) and 40 CFR 70.7(e)(4)(ii) specify that the significant modification is required to be acted upon within 9 months.

** Although generally expected to be processed as administrative amendment, the situation may occur where the criteria of Rule 216(1)(a)(v) are not met or the source may otherwise choose to apply for a significant modification, regardless. Option A is consistent with 40 CFR 70.5(a)(1)(ii).

*** If a change does not qualify for any of the other categories (which include operational flexibility, off-permit changes, administrative amendment, minor modification or Option A), it is considered to be of a nature that it must be approved and incorporated into the ROP before the source can make the change. See FR 32287, Vol. 5